

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
	)	WC Docket No. 11-42
Lifeline and Link Up Reform and Modernization	)	
	)	WC Docket No. 09-197
Wireline Competition Bureau Seeks Comment on	)	
Broadband VI Petition for Temporary Waiver of	)	WC Docket No. 10-90
Lifeline Program Minimum Service Standards	)	
	)	
To: Chief, Wireline Competition Bureau		

**COMMENTS OF VIRGIN ISLANDS TELEPHONE CORP. D/B/A VIYA**

Virgin Islands Telephone Corp. d/b/a Viya (“Viya”) submits these comments on the request for Temporary Waiver of Lifeline Minimum Service Standard (“Waiver Request”) filed with the Federal Communications Commission (“FCC” or “Commission”) on October 18, 2018 by Broadband VI, LLC (“Broadband VI”)<sup>1</sup> pursuant to Section 1.3 of the Commission’s rules.<sup>2</sup> Broadband VI seeks a “waiver of the minimum standard for speed for Lifeline-supported services”<sup>3</sup> until December 1, 2019 to provide Broadband VI with time to restore its backhaul and access points following Hurricanes Irma and Maria, which struck the United States Virgin Islands (“USVI”) in September 2017.<sup>4</sup>

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<sup>1</sup> Request for Temporary Waiver of Lifeline Minimum Service Standard filed by Broadband VI, LLC in WC Docket No. 11-42 (Oct. 18, 2018) (“Waiver Request”); *see also Wireline Competition Bureau Seeks Comment on Broadband VI Petition for Temporary Waiver of Lifeline Program Minimum Service Standards*, WC Docket Nos. 11-42, 09-197, 10-90, DA 19-133 (WCB rel. Feb. 28, 2019).

<sup>2</sup> 47 C.F.R. § 1.3.

<sup>3</sup> Waiver Request at 1.

<sup>4</sup> Waiver Request at 2-3.

As a general matter, Viya supports the issuance of appropriate waivers by the Commission in connection with devastating natural disasters such as Hurricanes Irma and Maria. In this case, however, Viya encourages the Commission to seek additional information from Broadband VI before acting on its Waiver Request because the facts offered in support of the Waiver Request may no longer be accurate. The question of whether Broadband VI has in fact shown special circumstances to justify a waiver of program requirements – particularly performance requirements – has the potential to set precedent for future cases as increasing numbers of capacity-constrained wireless Internet service providers enter the universal service program with the Connect America Fund Phase II auction.

First, Broadband VI asserts that a waiver is warranted due to capacity constraints on its network caused by hurricane damage. This appears, however, to be inconsistent with Broadband VI's filings in the Commission's Connect USVI Fund proceeding,<sup>5</sup> in which Broadband VI asserts that it fully restored its network by June 2018. Second, Broadband VI requests to be permitted to offer broadband service with a speed of 10 Mbps down and 1 Mbps up (*i.e.*, 10/1 Mbps) in lieu of the faster broadband speeds required to be offered by Lifeline providers under the Commission's rules. However, Broadband VI's website does not advertise a 10/1 Mbps broadband service and instead lists a basic service offering featuring only "up to" 5 Mbps down.

These two apparent inconsistencies call into question the fundamental premises of the Waiver Request and therefore warrant additional scrutiny by the Commission. Either Broadband VI is fully restored and does not need a waiver or its network remains significantly negatively impacted by the hurricanes and a waiver is warranted.

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<sup>5</sup> *The Uniendo a Puerto Rico Fund and the Connect USVI Fund*, Order and Notice of Proposed Rulemaking, 33 FCC Rcd 5404 (2018) ("*Connect USVI Order/NPRM*").

For all these reasons, the Commission should ask Broadband VI to expeditiously clarify both issues and then should provide an additional expedited opportunity for public comment on the Waiver Request once the facts are clear. This will enable the public to submit informed comments on the Waiver Request, and the Commission to assess whether good cause exists to grant the requested waiver.

## **I. BACKGROUND REGARDING BROADBAND VI'S ELIGIBLE TELECOMMUNICATIONS CARRIER DESIGNATION**

Broadband VI has requested waiver of the minimum broadband service speeds applicable to Lifeline providers: 15/2 Mbps through December 1, 2018 and 18/2 Mbps after that date.<sup>6</sup> Broadband VI requires the rule waiver to continue to qualify as an eligible telecommunications carrier (“ETC”), which, in turn, is a prerequisite for Broadband VI’s eligibility to receive Stage 1 and Stage 2 USVI Connect Fund support.<sup>7</sup>

Broadband VI initially applied to the USVI Public Services Commission (“PSC”) for an ETC designation on June 27, 2018 to “open up access to FCC grant funds to Broadband VI that are otherwise unavailable,” specifically Connect USVI Fund support.<sup>8</sup> Addressing the FCC’s

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<sup>6</sup> See *Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount*, Public Notice, 32 FCC Rcd 5087 (WCB 2017) (adopting minimum Lifeline service standard speed of 15/2 Mbps effective Dec. 1, 2017); *Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount*, Public Notice, 33 FCC Rcd 6769 (WCB 2018) (adopting minimum Lifeline service standard speed of 18/2 Mbps effective Dec. 1, 2018).

<sup>7</sup> See *Connect USVI Order/NPRM* at 5409 ¶ 19, 5415 ¶ 44 (2018).

<sup>8</sup> Application of Broadband VI, LLC for Designation as Lifeline Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Communications Act of 1934 and 30 U.S.V.I. Code § 45(b), filed by Broadband VI, LLC with the USVI PSC (filed June 27, 2018) (“Application”). In this initial Application, Broadband VI mistakenly sought designation only as a Lifeline-eligible ETC. See Application at 1. Upon realizing that Broadband VI was required to be designated an ETC eligible for Universal Service Fund high-cost support to qualify to receive Connect USVI Fund support, Broadband VI filed a brief amendment to the Application seeking such designation. See Letter to Donald Cole, Executive Director, USVI PSC, from Scot F. McChain, dated July 10, 2018 (“Broadband VI respectfully requests ETC designation for

requirement that all ETCs make Lifeline discounts available to eligible low-income consumers,<sup>9</sup> Broadband VI explained in its Application that it does not provide a broadband offering consistent with the broadband speed and price then required of Lifeline providers: 15/2 Mbps at \$59.95/month. It stated in the Application, however, that, “[i]f approved as an ETC, Broadband VI will launch a 15 Mbps down, 2 Mbps plan for \$69.95/month, which we would discount to \$59.95/month for customers that qualify for Lifeline support.”<sup>10</sup> Broadband VI also stated that it did not intend to initiate this Lifeline-compliant offering for “a year or two.” Instead, according to Broadband VI, it intended to

ask the FCC for Forbearance to ask for a Lifeline qualifying plan of 1Mbps down / 1Mbps up residential Internet service, which was the standard as of Dec 31<sup>st</sup>, 2017 and will be our Basic Internet service which we offer for \$49.95/month. If granted Forbearance by the FCC, we will then offer Lifeline qualifying customers our Basic service for \$39.95/month.<sup>11</sup>

When the PSC granted ETC status to Broadband VI on September 5, 2018, it conditioned the ETC designation on Broadband VI “provid[ing] a plan to the PSC to implement a Lifeline program” within 30 days.<sup>12</sup> The Broadband VI Lifeline Plan filed with the PSC restated verbatim the language from Broadband VI’s initial Application quoted above. It did not contain any new

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participation in both the federal low income customer (‘lifeline’) program and the federal universal service high-cost programs, *specifically the Connect USVI plan.*”) (emphasis added).

<sup>9</sup> See 47 C.F.R. § 54.101(d).

<sup>10</sup> Application at 8.

<sup>11</sup> Application at 6.

<sup>12</sup> USVI PSC Order, *Broadband VI, LLC Petition for Eligible Telecommunications Carrier Designation in the U.S. Virgin Islands*, Docket No. 669, Order No. 49/2018 (Sept. 5, 2018). Although Broadband VI’s ETC status is conditional pending outcome of the PSC’s review of Broadband VI’s Lifeline plan, which, in turn, is dependent for compliance on Broadband VI’s Waiver Request, Broadband VI nevertheless already has received \$931,211.69 of Connect USVI Fund Stage 1 fixed support. See *Wireline Competition Bureau Announces Stage 1 Restoration Funding for the Uniendo a Puerto Rico Fund and the Connect USVI Fund*, Public Notice, 33 FCC Rcd 8044 at 4, Attachment B (WCB 2018).

or additional information about how Broadband VI intends to comply with the Lifeline broadband speed and price requirements in the Commission's rules.<sup>13</sup>

## **II. THE COMMISSION SHOULD DETERMINE WHETHER SPECIAL CIRCUMSTANCES ACTUALLY EXIST WARRANTING THE GRANT OF THE WAIVER REQUEST**

Before considering this petition, the Commission should confirm that Broadband VI still requires the waiver set forth in its Waiver Request and that the facts outlined in the Waiver Request are current, accurate, and demonstrate special circumstances justifying a waiver. Even though the requested waiver is premised on ongoing damage to Broadband VI's network caused by Hurricanes Irma and Maria, Broadband VI has asserted on many occasions both before and after filing the Waiver Request that it fully restored its broadband network by June 2018 and intended thereafter to focus on expanding and improving the network. If, in fact, Broadband VI fully restored its network as it has asserted to the Commission, then no waiver should be necessary.

The Waiver Request, which was filed nearly five months ago, requests that the Commission waive Lifeline minimum service standard requirements due to the "special circumstances affecting fixed broadband service delivery in the U.S. Virgin Islands," namely the need to "recover[] from the devastation caused by Hurricanes Irma and Maria in 2017."<sup>14</sup> Specifically, Broadband VI explained that, as of October 2018, it had not adequately restored its backhaul and access points. As a result, its network suffered from "capacity constraints due to a combination of lingering hurricane damage and the growth of Broadband VI's subscriber

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<sup>13</sup> The PSC intends to review Broadband VI's "Request for Temporary Waiver of Lifeline Minimum Service Standards" at an upcoming open PSC meeting on March 19, 2019. *See* Government of the United States Virgin Islands Public Services Commission Agenda for its March 19, 2019 Regular Meeting, at 1.

<sup>14</sup> Waiver Request at 1, 6.

base.”<sup>15</sup> These constraints “adversely affect[ed] the ability of Broadband VI to offer its services.”<sup>16</sup> However, Broadband VI anticipated that “by December 1, 2019 it will have repaired and upgraded its backhaul links and access points to a point where it will be better able to meet fixed broadband service demand using faster speeds.”<sup>17</sup>

By contrast, in the USVI Connect Fund proceeding, Broadband VI asserted to the Commission on three separate occasions in June, July, and August of 2018 that its network already was fully restored and therefore that Broadband VI was commencing the expansion and improvement of its network.<sup>18</sup> Similarly, one week after filing the Waiver Request, Broadband VI’s executives informed the Wireline Competition Bureau that it had “fully restored service to its customers within eight months of the hurricanes.”<sup>19</sup> Broadband VI has reasserted this claim to

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<sup>15</sup> Waiver Request at 3.

<sup>16</sup> Waiver Request at 3.

<sup>17</sup> Waiver Request at 6.

<sup>18</sup> See Reply Comments of Broadband VI, LLC, Docket No. 18-143 at 3-4 (filed Aug. 8, 2018) (stating repeatedly that “Broadband VI quickly restored service” after the hurricanes and expanded its network’s coverage and subscribership); Comments of Broadband VI, LLC, Docket No. 18-143 at 2 (filed July 26, 2018) (asserting that Broadband VI “fully restored its services” and sought Connect USVI Fund support only to “improve its service and protect against possible future natural disasters”); see also Letter to Marlene H. Dortch, Secretary, FCC, from Michael Melusky, CTO and Founder, Broadband VI, WC Docket Nos. 18-143, 10-90, 14-58, at 1-2 (filed June 27, 2018) (same).

<sup>19</sup> Letter to Marlene H. Dortch, Secretary, FCC, from Stephen E. Coran and Philip A. Bonomo, counsel to Broadband VI, at 1, dated October 24, 2018 (providing *ex parte* notice of a meeting between the Bureau and Broadband VI executives in connection with the Connect USVI Fund).

the Commission in the Connect USVI Fund proceeding since.<sup>20</sup> Similarly, Broadband VI told the USVI PSC that it was “100% restored” as of June 2018.<sup>21</sup>

Broadband VI’s description of the status of its network in the Connect USVI Fund proceeding raises the question of whether the special circumstances Broadband VI relies upon continue to justify a rule waiver in this instance. Ultimately, grant of the Waiver Request only seems appropriate if, contrary to its Connect USVI Fund advocacy, Broadband VI continues to struggle *today* with the restoration of its network as a result of hurricane damage.

The Commission’s decision on this petition will set precedent that is likely to be relevant in future cases. With numerous capacity-constrained fixed wireless internet service providers entering the universal service program through the recent Connect America Fund Phase II auction, precedent about ETCs’ ability to meet the Lifeline minimum service standards, and the circumstances in which those service standard will be waived, will be increasingly important going forward. The Commission must therefore consider carefully whether Broadband VI has demonstrated special circumstances.

Therefore, additional current information about the status of Broadband VI’s restoration efforts appears to be required to enable the public to comment on the Waiver Request and the Commission to determine whether sufficient special circumstances exist to justify the Waiver

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<sup>20</sup> See Letter to Marlene H. Dortch, Secretary, FCC, from Stephen E. Coran, counsel to Broadband VI, at Attachment page 6, dated March 7, 2019 (providing *ex parte* notice of a meeting between Broadband VI executives and the Bureau, as well as legal advisors for Commissioners Starks and Rosenworcel and in connection with the Connect USVI Fund); Letter to Marlene H. Dortch, Secretary, FCC, from Stephen E. Coran and Philip A. Bonomo, counsel to Broadband VI, at Attachment page 6, dated Feb. 13, 2019 (providing *ex parte* notice of a meeting between Broadband VI executives and Commissioner O’Rielly, as well as legal advisors for Commissioner Carr and Chairman Pai and the Associate Bureau Chief of the Wireline Competition Bureau)

<sup>21</sup> ETC Application at 8.

Request. The Commission should require Broadband VI to publicly clarify the facts, seek additional comment, and then make its waiver decision based on a complete record.

### **III. THE COMMISSION SHOULD DETERMINE WHAT BROADBAND SPEEDS BROADBAND VI ACTUALLY OFFERS BEFORE ACTING ON THE WAIVER REQUEST**

Review of the waiver petition also raises factual questions about Broadband VI's offerings which should be clarified before a waiver could be considered. Specifically, there is a significant disparity between the broadband offerings that Broadband VI describes in the Waiver Request and the offerings currently available on Broadband VI's website.

The Waiver Request states that Broadband VI's broadband service featuring 10/1 Mbps is its most popular service<sup>22</sup> and requests that the Commission permit Broadband VI to offer this service on an interim basis in lieu of the speeds required to be offered by Lifeline providers: 15/2 Mbps through December 1, 2018 and 18/2 Mbps thereafter.<sup>23</sup> However, Broadband VI's website currently only advertises broadband service offering speeds of "up to" 5 Mbps down and "up to" 25 Mbps down.<sup>24</sup> (Broadband VI's website does not state any residential upload speeds.) No 10/1 Mbps service is mentioned on the website. In light of this, before considering whether the facts in this case meet the waiver standard, the Commission should require Broadband VI to clarify its actual offerings and its proposed Lifeline plans.<sup>25</sup>

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<sup>22</sup> See Waiver Request at 8.

<sup>23</sup> Waiver Request at 4.

<sup>24</sup> See Broadband VI, "Residential Plans," <https://broadband.vi/residential-plans/>.

<sup>25</sup> Broadband VI asserted in a filing with the PSC due in October 2018 that Broadband VI then offered 10/1 Mbps broadband service, but the company noted in the filing that it has "not updated website yet" [sic]. See Broadband VI Lifeline Plan, filed by Broadband VI with the USVI PSC( filing date unknown).



In the Waiver Request, Broadband VI states that it offers “a lower tier” with speeds of 10/1 Mbps for \$49.95/month, and “a higher tier” with speeds of 25/5 Mbps for \$99.95/month.<sup>26</sup> By contrast, Broadband VI’s website, [www.broadband.vi](http://www.broadband.vi), currently offers a distinctly different “lower tier” than is described in the Waiver Request. Specifically, Broadband VI’s website currently offers a Residential Basic Package for \$49.95 per month that features “[d]ownload speeds of up to 5 Mbps,”<sup>27</sup> rather than the 10 Mbps download speed presented in the Waiver Request.<sup>28</sup> No 10/1 Mbps broadband service is referenced on Broadband VI’s website at all<sup>29</sup> despite Broadband VI’s characterization in the Waiver Request of 10/1 Mbps broadband as its most popular service<sup>30</sup> and despite the reliance of the requested waiver on the provision of 10/1 Mbps service by Broadband VI.

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<sup>26</sup> Broadband VI notes that the higher tier only is available “where infrastructure can support higher speeds” but does not provide any indication of what portion of the Broadband VI’s network is capable of supporting the higher tier or to what portion of USVI’s geographic area or population the higher tier is available. *See* Waiver Request at 4.

<sup>27</sup> The true cost can only be determined by including substantial non-recurring fees. Broadband VI charges a \$199 installation fee if a customer agrees to a two-year term. When this installation fee is amortized across the two-year term, which Broadband VI calls the Residential Basic Installment Plan, then Broadband VI’s “up to” 5 Mbps down broadband service is \$59.95 per month. Further, if a customer opts not to commit to a two-year service term, the installation fee increases to a flat fee of \$499. *See* Section I(ii) of the Broadband VI Wireless Contract available on Broadband VI’s website at <https://broadband.vi/wp-content/uploads/2018/03/BBVI-Subscriber-Contract-3-7-18.pdf> (“Broadband VI Contract”). Broadband VI also charges an early termination fee of one hundred percent of the remaining contract value. *See* Broadband VI Contract, § III(ii).

<sup>28</sup> Broadband VI’s website states that Lifeline-eligible customers will receive a \$9.25 per month discount off Broadband VI’s broadband rates. *See* <https://broadband.vi/lifeline-internet-service/>.

<sup>29</sup> Broadband VI’s website also advertises a Residential Streaming Package that is very similar to the “higher tier” described in the Waiver Request. The Residential Streaming Package provides 25 Mbps down for \$99.95 per month. No upload speed is advertised. The installation fee for this service currently is waived for a limited time.

<sup>30</sup> *See* Waiver Request at 8.

These discrepancies further demonstrate that further information is needed before any determination can be made whether Broadband VI has demonstrated good cause for a waiver.

#### IV. CONCLUSION

For the reasons set forth herein, before acting on the Waiver Request, the Commission should seek clarification from Broadband VI regarding the factual assertions on which the Waiver Request is premised, including whether Broadband VI has, in fact, fully restored its network and whether Broadband VI is offering 10/1 Mbps service. Given the precedent this case will set, the Commission should act on the basis of a full record. Once Broadband VI has updated the record, the Commission should then provide the public an additional opportunity to comment on the Waiver Request, thereby enabling the Commission to assess the proposed rule waiver based on a full and complete record.

Respectfully submitted,

/s/ Geraldine A. Pitt

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